

Open Space

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 Open
Spaces
Society

Campaigning since
1865

Open Space

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Cover story

The kite festival on Dunstable Downs, common land on the Chiltern escarpment in Bedfordshire, is one of many ways in which commons can be enjoyed. The four-year Chiltern Commons Project comes to an end this summer and project officer Rachel Sanderson writes about its many achievements (see page 4). Photo: Chris Walker.



Fighting on

When David Cameron announced on 8 May that he was forming a government, he boasted of his achievements over the last five years and what he would do in the next five.

Not surprisingly there was no mention of the environment. Indeed, it is hard to think of much that the coalition government did do for the environment—beyond the welcome Deregulation Act which will aid the addition of paths to the definitive maps, and the acceleration of coastal access.

For the government schmoozed with its cronies, the developers. By the Growth and Infrastructure Act 2013 it outlawed registration of land as a green where it was threatened with development—without evidence to support the claim that people were abusing the greens process to stop building. This has put green spaces under greater threat in England (the Welsh Government is more enlightened: thanks to our efforts it has decided not to copy the egregious 2013 act).

Mitigation

Ministers offered ‘local green space’ in mitigation without explaining how such spaces can be achieved. Consequently they are few. We have published advice to encourage designation.

In a move to crush free speech, the government legislated to make it more difficult for charities to lobby parliament and to challenge decisions by judicial review.

The Conservatives give environmental undertakings in their 2015 manifesto. They promise to ‘put in place stronger protections for our natural landscapes ... launch a programme of pocket parks in towns and cities ... ensure that our public forests and woodland are kept in trust for the nation and plant another 11 million trees’ and provide ‘free, comprehensive maps of all open-access green space.’

That may sound good but it relies on public funding which is shrinking fast. The continuing swingeing cuts to local authorities’ and national park authorities’ budgets mean that our fragile and vital landscapes, open spaces and public paths will suffer as never before.

Commercialised

Highway authorities are farming out their work to profit-chasing contractors who are accustomed to vast infrastructure projects and for whom our public paths are small beer, insignificant and easily overlooked. Public accountability becomes fuzzy. Councils are looking to commercialise open spaces—Clapham and Ealing Commons host inappropriate events and Surrey County Council threatens to use Chobham Common, a national nature reserve, for money-raising activities. Public funding for our spaces and paths should be boosted, as an investment in our health and well-being.

For the last 150 years the Open Spaces Society has fought for the public’s rights against private interests. Our appetite for the continuing fight is unabated. **KJA**

Our middle years: 1915-1965

This year we celebrate our 150th anniversary. These are some of our activities in our middle 50 years.

The society drafted and won the common-land clauses in the 1925 Law of Property Act.

Section 193 gave the public the right to walk and ride on urban commons and on rural commons where the owner had made a deed of access.

The society prepared model forms for the act's processes and deeds of access, and it persuaded the Crown Estate in 1932 to open its 104 square miles of rural commons in Wales to public access.

Section 194 prevented enclosure of common land without ministerial consent and gave local authorities powers to enforce against unlawful works. In 1928 Woking Urban District Council in Surrey lost a case concerning an unlawful shed on Horsell Common. This highlighted the difficulty of operating section 194 without maps of commons.

The complexity and uncertainty of the law on public paths deterred local authorities from undertaking proceedings. To avoid litigation, the

Sandpit on Horsell Common where the Martians landed in HG Wells's 1898 novel The War of the Worlds. Photo: Paul Rimmer.

society encouraged the 'friendly settlement of footpath disputes' and established a panel of arbitrators to do this; they sometimes found against the public.

The society was responsible for the Rights of Way Act 1932 which enabled people to claim a public path if they could prove 20 years' use without interruption or challenge. We encouraged local authorities to survey and record public highways.

Technical

Amid all this immense technical work, the society was oblivious to the growing popularity of hiking among people who wanted to escape into the countryside and not become entangled in the law. Thus the Ramblers' Association, formed in 1935, eclipsed the legalistic and cautious Commons Society, although in numbers the latter remained the principal body concerned with the technical essentials.

The Kinder Scout mass trespass of 1932 (which the society and Ramblers did not





Panorama from Pumlumon, central Wales, a Crown Estate common dedicated for public access in 1932. Photo: Liz Fleming-Williams.

support) was part of the growing movement for free access to the hills. Rallies throughout the 1930s publicised the outrageous way in which walkers were excluded.

This activity led to the Access to Mountains Bill 1939 which envisaged free access to uncultivated land. But it was mangled during its passage through parliament, largely because of the behind-the-scenes work of Lawrence Chubb, who had been secretary of the society since 1896. He died in post, in 1948.

Limited

The final act did not provide a general right of access, but for access to be given, on request, to limited types of land and only during daylight. There was a list of restrictions, breach of which would be a crime, so mere trespass was to become a criminal offence punishable by fine.

Fortunately the act never came into operation because the war intervened. It was repealed by the National Parks and Access to the Countryside Act 1949.

This act established national parks, areas of outstanding natural beauty, national nature reserves and long-distance paths in England and Wales. Probably its biggest impact on the general public was the requirement that local authorities should produce definitive maps of public paths, ie statutory records.

Once the act was passed, the most

pressing job for the voluntary sector was to claim public paths for the new definitive maps. While the Ramblers organised coachloads to survey paths in thinly-populated countryside, the society staidly focused on the legal elements, issuing technical advice on how to claim paths.

Published

The first definitive map was published in 1956, by Durham County Council. Even today coverage is not quite complete nationwide.

The society continued to champion commons which were threatened by agricultural intensification. In July 1955 the government announced a Royal Commission on Common Land. The society presented detailed written and oral evidence, and was pleased with the 1958 report. This recommended, among other things, that all commons should be recorded on registers, they should be open to the public as of right, and anyone with a legal interest in the land could promote a scheme for its management.

The Commons Registration Act 1965 dealt with only the first element of these recommendations. The remainder was not forthcoming for nearly 50 years. □

We have published two books for our anniversary: *Saving Open Spaces* and *Common Land* (£5 each or £8 for two). See <http://bit.do/3uKZ>.

Championing Chiltern commons

As the Chilterns Commons Project comes to an end, project officer Rachel Sanderson reflects on its achievements.

In the south-east of England, a large number of small commons provide important recreational facilities for people in urban and semi-urban communities. Over the last four years, the Chilterns Commons Project, run by the Chilterns Conservation Board, has been championing the 200 or so commons in the Chilterns.

The Chilterns are an Area of Outstanding Natural Beauty (AONB) which stretches from the River Thames at Goring in Oxfordshire north-east to Hitchin in Hertfordshire, covering 324 square miles. As in many lowland areas, most commoners' rights were extinguished following the 1965 Commons Registration Act and, of those which remain, only a handful are exercised.

Commons have been at the heart of our communities since mediaeval times, but twenty-first-century lifestyles often lead to changing land management or the neglect of small commons. With the

cessation of grazing in the Chilterns, scrub and young woodland have developed on many commons making them less accessible and easily overlooked.

There is a rich history associated with the region's commons, from Neolithic burial mounds to clay pits and chalk quarries used by the brick and tile-making industry to build those Midsomer Murder-type cottages.

More recent history includes WWI practice trenches and WWII camps for troops and prisoners of war. The commons are also important habitats and many of the largest are designated for their wildlife interest. Through the Chilterns Commons Project, communities have been reconnected with their local commons and more people are now aware of the treasure trove of commons in the region.

The last four years have been a whirlwind of activity. The range of work has been

Left: Moored Common, Bucks. Photo: Clive Ormonde. Right: volunteer pond-surveyors, Pitstone Common, Bucks. Photo: Emily Smith.





Left: surveying the ww1 trenches on Berkhamsted Common, Herts. Photo: Colin Drake. Right: Bison Hill common, Eaton Bray, Beds, looking towards Ivinghoe Beacon. Photo: Chilterns Conservation Board.

their communities, from guided walks to picnics.

We have published *Our Common Heritage*, six essays about the social history of Chiltern commons (see spring *Open Space* page 16).

Legacy

The project's legacy also includes some new research into best practice for managing commons and other areas of green open space that are not in agricultural production. Recreational use gives our open spaces new relevance in the twenty-first century.

The research papers, published in *Local Spaces: Open Minds*, contain some inspirational ideas on options for new uses of lowland commons and other green spaces. These include outdoor education for all ages, natural playgrounds and venues for a wide range of recreational activities, and important habitats for wildlife in a time of changing climate.

Wheeler End Common, Bucks. Photo: Clive Ormonde.



With careful zoning, a range of activities can happen even on small lowland commons, and are not exclusive of each other. The book is available as a free download from <http://bit.do/3VuU>.

Grant

All this has been possible because of a £400,000 grant from the Heritage Lottery Fund and contributions from the Chilterns Conservation Board, Chiltern Society and 17 other partners. Although the Chilterns Commons Project ends this summer, there is much ongoing activity to conserve and promote local commons. For more information about the project see <http://bit.do/3Vps>. □

The Open Spaces Society is keen that the knowledge of and enthusiasm for the Chiltern commons which the project has generated should continue to grow. We would also like to see this work replicated in other parts of the country as a fine way of celebrating and protecting our priceless commons—editor.



Highways under threat

Our vice-chairman Phil Wadey explains how you can ensure that you will not be losing vital sections of path on the cut-off day, 1 January 2026.

Section 53 of the Countryside and Rights of Way Act 2000 provides that footpaths and bridleways that existed on 1 January 1949 but are not on the definitive map on the cut-off day will be extinguished, subject to safeguards yet to be put in regulations. The cut-off was to take effect on 1 January 2026 preceded by an intensive quarter century of identifying and applying for routes to be added to the definitive maps.

More than half that time has passed and it is now essential that we carry out research and make applications for unrecorded, or under-recorded, paths to be put on the definitive map of rights of way—or they will be lost for ever.

Three categories of path are particularly vulnerable because they may be wrongly assumed to be correctly recorded and so no one will make an application for their

retention. These are: (1) paths shown on the Ordnance Survey map as 'other routes with public access' (ORPAs); (2) definitive map anomalies; and (3) routes straddling local authority boundaries.

ORPAs are shown with green blobs on the OS *Explorer* maps and red blobs on the *Landranger* series.

Vulnerable

Examination of ORPAs in Hertfordshire has shown that, although information about these paths was supplied to Ordnance Survey, several are no longer shown on the list of streets (a list of highways maintainable at public expense which, under section 36(6) of the Highways Act 1980, each highway authority has a duty to keep). The danger is that any route that was a public highway before 1949 and is not on the list of streets or definitive map in 2026 will be extinguished, even if it is the only means of access to a continuing footpath, bridleway or byway.

We recommend that you identify the ORPAs on an OS map sheet and highlight

Unrecorded track leaving Wallington 32 BW in north Hertfordshire, grid reference TL 2942 3368. This route is at risk (see page 8). Photo: Phil Wadey.





Road near Peter's Green, Harpenden, Hertfordshire, grid reference TL 1389 1877. Photo: Phil Wadey.

those that do not appear to be ordinary roads. For each of those highlighted, you should check the list of streets to see whether it is recorded. If it is not, you should add the route to your 'highways under threat' list for future work.

The second category is the one many authorities refer to as 'anomalies'. This is where a path suddenly changes status, often at a parish boundary. I include in this category those paths that run along or meander close to a parish boundary, where part of the path falls in a different parish from most of the length.

Stop short

In Hertfordshire I have found examples of paths which stop 10 to 50 yards short of another highway, with the gap neither on the definitive map nor on the list of streets. Others have been found where just a short distance falls in a different parish, and it was not recorded there. Where these are highways, they are likely to be lost in 2026 and so need adding to the definitive map.

Worse still, I have found examples where the council signpost is on the road, so the walker or rider would be unaware that the path was in danger. The track in the photograph on page 7 is signposted as 'bridleway 32' just to the left of the photographer, yet the definitive map does

not show the bridleway starting for another 30 yards.

We recommend that you look carefully for any unexpected changes of status of paths, or gaps between paths and the roads they should be joining, and highlight these as needing investigation.

The third category of unusual path is the one that straddles a county or unitary authority boundary.

The route in the photograph (left) looks like a normal road. It is maintained, and anyone driving along it would have no idea that on the cut-off day half of it could vanish due to administrative error. The route runs along the county boundary between Hertfordshire and Central Bedfordshire. In Bedfordshire (the left-hand half) the road is on the list of streets, but in Hertfordshire it is not recorded at all. If there is no application for the route it is likely that only the Bedfordshire strip would retain public rights.

Vehicular rights

When the Natural Environment and Rural Communities Act 2006 extinguished mechanically-propelled vehicle rights that were not recorded, section 67(2)(b) retained the rights on routes shown in the lists of streets. However, in many places the lists were inaccurate; thus there are now many routes which in law probably no longer have the status needed for driving, even though they look like roads.

These routes could be lost to walkers, riders, cyclists and carriage drivers, and I recommend that you examine all routes that run along the boundary with a neighbouring authority, especially those that lead to routes shown on the definitive map, and then that you check the list of streets in both authority areas to ensure the route will be safeguarded.

For more information about applying to add routes to the definitive map see <http://www.restoringtherecord.org.uk>. □



West Beach not a green

R (on the application of Newhaven Port and Properties Ltd) v East Sussex County Council and another, supreme court [2015] UKSC7.

Five law lords have decided that West Beach at Newhaven, East Sussex, will not be registered as a village green.

In December 2008 our member Newhaven Town Council applied to East Sussex County Council, the registration authority, to register the beach as a green under section 15 of the Commons Act 2006. The six-hectare site is part foreshore and part tidal beach.

Following a public inquiry the council decided to register the land but the owner, Newhaven Port and Properties Ltd (NPP), applied for judicial review of the decision. This challenge was upheld by Ouseley J in the high court in March 2012 but subsequently reversed in the court of appeal (OS summer 2013 page 2). NPP appealed to the supreme court. Newhaven

Town Council was represented by George Laurence QC.

The Newhaven Harbour Improvement Act 1878 conferred on the Newhaven Harbour Company the power to make by-laws. These were made in 1931 to restrict, among other things, fishing, playing games and dog walking. The harbour was vested in NPP in 1991. The beach is part of the operational land of the harbour and is subject to the by-laws.

The lords considered three main issues.

By-laws

In order that land may be registered as a green, local people must demonstrate that they have used the land for recreation 'as of right', ie without challenge or permission for 20 years. NPP argued that the public enjoyed an implied licence to use the beach for recreation, and this was upheld by the law lords. Although the by-laws had not been published and the public was unaware of them, the court held that they effectively prohibited

The much-loved West Beach at Newhaven. Photo: Rod Main.



certain recreational activities and therefore impliedly permitted those which were not prohibited. The use was therefore 'by right' not 'as of right'.

This is worrying as it reinforces the decision in *Barkas** that it is not necessary for the landowner to show that members of the public had it drawn to their attention that their use was permitted rather than 'as of right'.

Statutory incompatibility

Having found for NPP on this, the court did not need to opine on the other points of challenge, but it decided to do so. It ruled that it was not possible to obtain rights by prescription against a public authority which had acquired and used land for specific statutory purposes when the exercise of those rights would be incompatible with the statutory purposes. Registration of the beach as a green would make it a criminal offence to damage it and this was incompatible with its use as a working harbour.

Thirdly, the court tried to establish the legal basis of the public's use of the beach and concluded there were three options: (1) there is a general common-law right to use the beach for bathing, (2) the owner of the beach is presumed to permit members of the public to use the beach until the owner revokes the implied permission, or (3) no such rights exist and members of the public are trespassers.

Neither party argued that there was a

general right of recreation, as it was not in their interest to do so. Clearly NPP would not want such a right and, for the purposes of claiming a green, Newhaven Town Council needed to demonstrate that the public had trespassed with the acquiescence of the landowner and that this use had thus, by prescription, hardened into a right.

The lords did not reach a decision on this, but felt it best to proceed on the assumption that members of the public used the beach for bathing 'as of right'. So (small consolation) the town council won this point. This leaves open the intriguing possibility that there is already a right of recreation on beaches.

Paved

George Laurence writes: 'It may be that *Newhaven* will turn out to have paved the way for much greater and more wide-ranging protection for recreational use of the beaches of England and Wales than the result of the actual case suggests.'

If so, something good may be salvaged from this sad case. It is a devastating loss for the plucky residents of Newhaven who love their beach and now cannot protect it. It also further erodes the law on greens in favour of landowners and against the public interest. □

**R (on the application of Barkas) v North Yorkshire County Council and another*, supreme court [2014] UKSC31 (OS autumn 2014 page 7).

Come to our AGM

on Thursday 9 July 2015 at 11 am

Friends House, 173 Euston Road, London NW1 2BJ

After the formal business, we have 'Championing Chiltern Commons', a talk by Rachel Sanderson, the Chiltern Commons Project Officer (see page 4).

In the afternoon members may give short talks on their campaigns. *Please let us know by 1 July if you would like to take part.* Contact ellen.froggatt@oss.org.uk or 01491 573535.

A novel gift to the society

Our member Maurice Philpot explains how he will give the society an unusual birthday present.

On 12 December 1994 Daphne Buxton granted me a right of common (of estovers), and in doing so created the first new common in England for at least 150 years.

Twenty years earlier Daphne had bought the Old Smithy at Rushall in south Norfolk with just over three acres of detached land. Subsequently she sold the Old Smithy and its garden, retaining ownership of the two fields of pasture and a former stackyard. But she was already forming an innovative plan for the future of these three pieces of land, and during 1993 she began to put this into action. Her wish was to make a gift of the land to the parish and its people as a recreational and natural resource for everyone.

Safeguard

But how could she safeguard the original intention should the temptation to sell the land become irresistible? At that time many school playing-fields and open spaces were being sold for development. So Daphne decided to establish a right of common. This does not confer a right to own or manage the land, but it does inhibit the ability of an owner to dispose of it or undertake any works or actions which would impede the exercise of the common right. Meanwhile, commoners enjoy what another's land produces.

The most usual right of common in East Anglia is grazing—but different rights exist in other parts of the country and Daphne remembered the right of estovers which saved Epping Forest.

Rights of common may be held in gross (like mine): that is, vested in an

individual and capable of being passed on by sale, gift or will; or they may be held appurtenant, attached to a particular property and enjoyed by successive owners.

Immediately on the grant of the right of estovers the land became common, and both the right and the land were registered under the Commons Registration Act 1965. Following registration Daphne generously gave the land, now called St Clement's Common, to Dickleburgh and Rushall Parish Council. Sadly, she died in 1996.

Intention

It had been my intention that the Open Spaces Society should inherit my right of common—but sometimes it is good to realise an ambition in one's lifetime. So, as a minor part of the society's 150th birthday celebrations, I have the pleasure of conveying my right to the society as a gift. □

We are extremely grateful to Maurice for this generous and thoughtful anniversary present—editor.

Celebrating the 2012 diamond jubilee on the common. Photo: Tim Webster.





Our open spaces tool-kit

We have published a tool-kit to help communities save their local spaces. It consists of three handbooks: *How to win local green space through neighbourhood plans*, *Community assets and protecting open space*; and *Local green space designation*. They apply to England only and can be downloaded from our website.

We have also written to all the English planning authorities calling on them to designate land as local green space (LGS) through neighbourhood plans, rather than waiting to be asked to do so.

The opportunity to designate LGS has existed for three years, supposedly as mitigation for the government's attack on village greens, but we still have few, because the advice and definitions are inadequate and vague.

We also suggest that people list open space as a community asset as an alternative way to protect it. Such listing *Queen's Crescent Garden, designated as LGS in the Exeter St James neighbourhood plan. Photo: Aylwyn Bowen.*



is a material consideration in planning and the asset cannot be sold before local people have had a chance to bid for it.

It is becoming more difficult to list open spaces. Data collected by Development Control Service in 2014 from 134 local planning authorities shows that only half the open space nominations succeeded (36 out of 71). We hope that our guidance will help you save your open spaces.

St John's Lye

We have responded angrily to Woking Borough Council's consultation about car-parking on St John's Lye Common in Surrey. Local residents had complained about the inadequate parking after the opening of the new memorial hall, and

Lost commons

Thank you for your generous response to our lost commons appeal. If you have not yet made a donation please consider doing so. Also, do remember to contact your commons registration authority (county or unitary council) and ask to be informed of any applications to amend the commons registers.

the council proposes two alternative sites, both on the common. This should have been resolved before the memorial hall was opened. We have pointed out that any such provision will require the Secretary of State's consent.

Circuit of Wales

Our general secretary gave evidence at the public inquiry into the Heads of the Valleys Development Company's proposed common-land swap, under

section 16 of the Commons Act 2006. The company had to provide common land for walkers and riders in exchange for that to be taken by the Circuit of Wales motorsport development.

We argued that it was unfair to replace a square mile of hilltop common with seven scattered sites, most of which were already open to walkers but unsuitable for riding. We called Mark Weston, director of access at the British Horse Society, as a witness. We await the result.

Goodbye and hello

We are sad that our financial administrator Mark Taylor has retired after six years with us. We shall miss Mark's quiet efficiency; he has transformed and streamlined our membership and finance processes.

We welcome Trevor Quattrill to the post. Trevor was until his retirement managing director of Boxes and Packaging Ltd, a company for which he worked for about 30 years. He is also treasurer of the Bourne End Community Association, close to his home in Bucks. He enjoys walking by the Thames, in the New Forest and along the Hampshire coastline.

Bodmin's commons

In 1998, after five years of contention in parliament, Cornwall County Council withdrew its ill-conceived Bodmin Moor Commons Bill. We opposed it because it threatened public access at the expense of landowning and commoning interests. Now we have the right to walk on much of Bodmin and the picture is different.

We have therefore backed the plan to create a commons council for Bodmin Moor. This would be the second commons council created under the Commons Act 2006—the first was established for Brendon Common in Devon in April 2014. The Secretary of State for Environment, Food and Rural Affairs has consulted on whether to



Cairn on Bodmin Moor common. Photo: Graham Bathe.

establish the council and will only do so if there is substantial support for it.

A council would be authorised to take majority decisions on agricultural matters such as the regulation of grazing and improvement of animal welfare, which would benefit the commons' landscape and ecology.

New green at Nympsfield

Our member, the Nympsfield Village Green Action Group, has registered The Leaze in Nympsfield as a village green. The group applied to Gloucestershire County Council for a green in 2009 when the landowner, the Gloucester Diocese Board of Finance, had proposed that the land be allocated for housing.

The group was able to demonstrate that this historic four-acre field, close to the parish church, had been used for recreation for at least 20 years. Eighteenth-century maps show that The Leaze was previously called The Greens.

The group believes that this new green was in fact the original village green on which common rights had been extinguished by enclosure. □

Our green-space manifesto

Now that the general election is over, don't forget to ask your MP to back our manifesto for green spaces (see OS summer 2014 page 7 or <http://bit.do/3Yyb>).

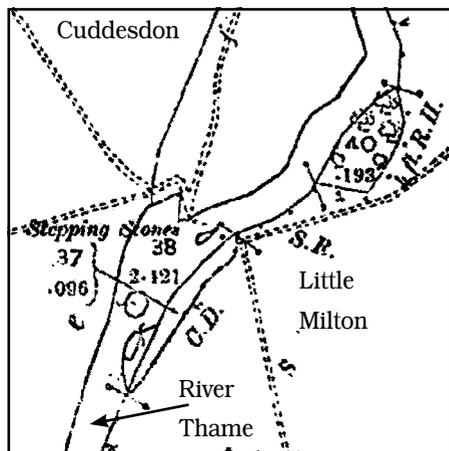
Path Issues

Stepping stones

Three miles east of industrial Cowley, deep and peacefully remote in the meadows of the Oxford green belt, is a legal battleground at grid reference SP 601 005. As recently as 2006 the spot was labelled by the words 'stepping stones' on the 1:2500 Ordnance Survey (OS) maps because here people used to cross the little River Thames.

In 2002 society member Hugh Crawley claimed a right of way across the river for the definitive map. Ten years later Oxfordshire County Council (OCC) rejected his claim. Hugh, a determined warrior (he landed in Normandy on D-Day + four), appealed and the planning inspector (Peter Millman) found for him—and directed OCC to make the

The stepping stones first appeared on this 1:2500 1898 OS map. The tiny eyot has now vanished. The footpaths (pecked double lines) converge at the crossing and are now definitive rights of way.



order. Two landowners, Sir Victor Blank, a banker at nearby Chippinghurst Manor, on the western bank, and an absentee farmer on the other side objected to the order. OCC opted for neutrality and it was agreed to deal with the objections by written representations.

Hugh Crawley's research showed that until the 1880s there was a weir at this point which was also used as a footbridge. People crossed the river between Little Milton on the left (east) bank and Cuddesdon on the west. On the east bank two footpaths converged at the site. On the west bank two paths also converged (see map). Whichever your direction the weir-bridge saved a deal of circuitous walking to the next bridges (a couple of miles to the north and south).

Common sense

The paths are still there, now on the definitive map as Little Milton FPs 4 and 5 and Cuddesdon & Denton 19 and 21. Common sense suggests a right of way across the river; there is and has been no other reason for walking to the Thames at that point other than to cross to the other side. Great Milton Parish Council in the 1890s said that 'a valuable right of way ... had fallen into disuse through the decay of the bridge' and with its neighbours pressed the Headington Rural District Council (the highway authority) to act, but the council refused stating (without reasons) that it did not believe there was a right of way.

In 1898 the stepping stones made their first appearance on the OS map, replacing the weir-bridge. They remained in use until at least the 1960s when a local footpaths society tried to have the



The late Yvonne Crawley crosses the Thame at the site of the stepping stones during a Ramblers' 2003 demo; her husband Hugh researched and made the claim to have the crossing recognised as a right of way. The footings of the former weir-bridge can be seen behind her. Photo Chris Hall.

crossing placed on the definitive map. OCC resisted and won. The claim was dealt with by a civil servant with little or no understanding of highways law; nor had the history of the route then been researched. But despite the gradual decay and dispersal of the stones people continued to cross or try to cross there, no doubt attracted by the legend 'stepping stones' on the OS maps and by the fact that nobody has ever tried to stop them.

Hired

The solicitors, Bircham Dyson Bell, hired to oppose the creation order in the present proceedings, point to the lack of documentary evidence of a right of way. They also claim that any right of way over the river has been 'annihilated' because the stepping stones have disappeared and so has the tiny eyot in the river which was once linked to either bank by the weir-bridge. The stepping stones BDB claim (without evidence and

in the face of OS surveyors' findings) were never stepping stones but the remains of the bridge. The society engaged George Laurence QC and he controverts this argument essentially on the ground that it is still possible to cross the river on the route of the stepping stones albeit less conveniently than when they were in place. He also points out that OCC has been 'overly concerned to find evidence of public use'; but s32 of the Highways Act 1980 'permits and requires regard to be had to documentary evidence'.

He summarises: '... in a case such as this, which is based primarily on documentary evidence, it will usually also be the case that the same evidence which makes it reasonable to allege that public rights subsist [the test applied in granting Mr Crawley's appeal], will also permit and require the tribunal to conclude, on a balance of probabilities [the test in the present proceedings], that public rights do subsist'.

There is to be a site inspection on 30 July.

Chris Hall

Interest not proven

Thanks to our objection Lyng footpath 3, four miles south of Reepham in Norfolk, will stay put.

Breckland District Council wanted to move the route which runs past the property Patholme. The owner, Mr Duncan McLennan, originally tried to divert the path under the Town and Country Planning Act 1990 (TCPA) to allow the erection of an annex to his property. The relevant committee approved the order but the development was completed making a TCPA order inappropriate. A second order was made under the Highways Act 1980.

The definitive route runs south from a road junction for 24 metres across what is now the garden of Patholme and thence through a fenced hedge-line to continue

south across a field. The diversion would have made a straight, north-south path into a double dog-leg, around the edge of the field to the west, increasing the distance by 13 metres.

Our local correspondent, Ian Witham, was the only objector. The matter was dealt with by written representations.

Argued

The council argued that the annex which was within one metre of the path was occupied by an elderly person who was often alone at the property and felt vulnerable. The diversion would improve the privacy and security of the occupiers of the house.

The inspector, Helen Slade, upheld our objection. She had received no evidence to support the council's contention. She wrote that on her site visit 'it took a matter of less than 30 seconds to cross the garden area. I noted that the windows overlooking the path were dressed with blinds to afford privacy to the occupants' and that there was no evidence 'to suggest that users of the path feel uncomfortable using the path'.

She therefore concluded that the order had not been shown to be expedient in the *Footpath 3 looking south. The path runs past the telegraph pole and through the garden to the signpost on the road. The diversion was around the field edge to the left. Photo: Ian Witham.*



interests of the landowner. It failed the first test.

Says Ian: 'We are delighted with the result. Many properties co-exist with public paths nearby and there is no difficulty about this. The inspector considered that although the order had been made in the landowner's interests, these had not been demonstrated. We are sorry that Breckland District Council spent money on this fruitless exercise.' (FPS/F2605/4/2, 2 Feb 2015)

The Big Pathwatch

This summer, with funding from the Ramblers Holidays Charitable Trust, the Ramblers are launching a survey of all the public paths in England and Wales, as shown on Ordnance Survey maps.

Anyone can take part, you just register for a one-kilometre square and walk all the paths shown on the OS map reporting what you find—good and bad—to the Ramblers. You can download a free app for your phone to assist reporting. The Ramblers will use the results to assess the state of the network and to come up with long-term solutions to ensure the path network is protected and maintained.

Details are on the Ramblers' website <http://bit.do/3UNY>.

Deregulation Act

On 26 March the Deregulation Act won royal assent.

The act aims to streamline and speed up the process for the addition of highways to the definitive map. The stakeholder working group, of which our general secretary is a member, is advising on the detailed regulations and guidance including, crucially, the definitions of those routes which will be exempt from the definitive map cut-off on 1 January 2026. (See page 7 for advice on recording routes which may otherwise be lost.)

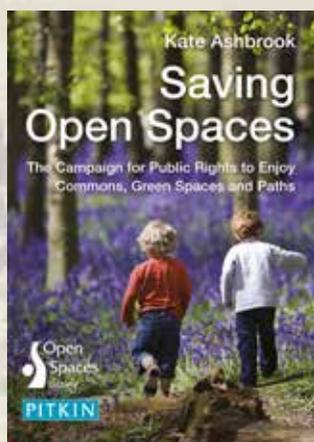
The intention is for the act to come into effect on 1 April 2016. □

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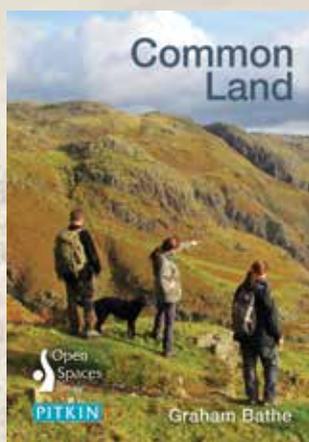
SAVING OPEN SPACES

Kate Ashbrook tells the story of the Open Spaces Society's 150-year struggle for commons, greens, open spaces and public paths.



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Graham Bathe explores our heritage of commons, the opportunities they provide for enjoying wildlife, archaeology and recreational access, and their links to folklore and literature



Order online at <http://www.oss.org.uk/what-we-do/publications/>

During 2015, members can take part in a variety of events and activities to celebrate our 150th anniversary—please see calendar below or visit <http://www.oss.org.uk/our-150th-anniversary/> for further information.

150th anniversary calendar

- | | |
|---------------------|--|
| 9 July | Annual general meeting |
| 9 August | Big Picnic on the Rye, High Wycombe, Bucks (jointly with the High Wycombe Society) |
| 19 September | Open day, Bursledon, Hampshire (hosted by the Bursledon Rights of Way and Amenities Preservation Group)* |
| 30 September | Closing date for 150 Anniversary photo competition |
| 11 October | Open day at Ashted Common, Surrey (hosted by the City of London Corporation)* |
| 18 October | Planting an oak tree to celebrate 150 years since the award of Nottingham's allotted open spaces |

* booking form enclosed

The Open Spaces Society was founded in 1865 and is Britain's oldest national conservation body. We campaign to protect common land, village greens, open spaces and public paths, and your right to enjoy them. We advise local authorities and the public. As a registered charity we rely on voluntary support from subscriptions, donations and legacies.

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Local organisations; parish, community and town councils: £45.

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